

HOUSE BILL No. 1456

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2-73.5; IC 12-23-14.5; IC 31-34-20-1.

Synopsis: Drug courts and children in need of services. Allows a parent, guardian, or custodian of a child who has been adjudicated a child in need of services due at least in part to the substance abuse of the parent, guardian, or custodian to participate in a drug court and receive intervention, treatment, and rehabilitative services. Specifies that if the parent, guardian, or custodian: (1) successfully completes drug court; or (2) has the person's participation in the drug court terminated; that fact must be taken into consideration when modifying a dispositional decree concerning the child in need of services. Provides that, in addition to certain other conditions, a court may defer criminal or juvenile proceedings and place a person who is a parent, guardian, or custodian of a child who has been adjudicated a child in need of services in a drug court only if the department of child services consents to the referral.

Effective: July 1, 2009.

Gutwein, Avery, Bell

January 13, 2009, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1456

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-73.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 73.5. (a) "Drug court", for purposes of IC 12-23-14.5, means an immediate and a highly structured judicial intervention process for substance abuse treatment of:

(1) eligible defendants; ~~or~~

(2) eligible juveniles; or

(3) **an eligible parent, guardian, or custodian of a child who has been adjudicated a child in need of services due at least in part to the substance abuse of the parent, guardian, or custodian;**

that ~~(1)~~ brings together substance abuse professionals, local social programs, and intensive judicial monitoring and ~~(2)~~ follows the ten (10) key components of drug courts published by the Drug Court Program Office of the United States Department of Justice.

(b) The term does not include an alcohol abuse deterrent program established under IC 9-30-9.

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SECTION 2. IC 12-23-14.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as provided in subsection (b), a drug court established under this chapter and accompanying services are open only to individuals over whom the court that established the drug court has jurisdiction.

(b) A drug court that does not otherwise have felony **or juvenile** jurisdiction may accept an eligible individual who is referred to the drug court from another court within the county if the following criteria are met:

(1) The drug court returns the case to the court that made the referral for appropriate proceedings when the person has successfully completed drug court or the person's participation in the drug court has been terminated.

(2) If the drug court is a city or town court, the person selected as judge for the court is required to be an attorney under IC 33-35-5-7.

SECTION 3. IC 12-23-14.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) A person is eligible to participate in a drug court: ~~only if:~~

(1) **only if** the person meets all criteria established by the drug court;

(2) **only if** the judge approves the admission of the person to the drug court; and

(3) **if the person is referred to the drug court for committing an offense, only if** the offense for which the person is referred to drug court is not any of the following:

(A) A forcible felony (as defined in IC 35-41-1-11).

(B) Any offense that a local drug court committee agrees to exclude from participation.

The local drug court committee referred to in subdivision (3)(B) must include the drug court judge, the local prosecuting attorney, and a local criminal defense attorney.

(b) If a person is eligible to participate in a drug court, a person may be referred to the drug court as a result of any of the following:

(1) The procedure described in section 15 of this chapter.

(2) As a term of probation.

(3) In response to a violation of a condition of probation.

(4) A dispositional decree entered under IC 31-34-20-1(a)(9).

SECTION 4. IC 12-23-14.5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) A drug court may follow the procedure described in this section only if:

(1) a person:

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(A) pleads guilty to an offense in which the use of alcohol or drugs was a contributing factor or material element of the offense; or

(B) is a parent, guardian, or custodian of a child who has been adjudicated a child in need of services due at least in part to the substance abuse of the parent, guardian, or custodian;

(2) the court refers the person to a drug court;

(3) the prosecuting attorney consents to the referral;

(4) the department of child services consents to the referral if the person is a parent, guardian, or custodian of a child who has been adjudicated a child in need of services;

~~(4)~~ (5) the person who pleads guilty under described in subdivision (1) consents to the referral;

~~(5)~~ (6) the person who pleads guilty under described in subdivision (1) is eligible to participate in the drug court under section 14(b) of this chapter and the drug court accepts the referral; and

~~(6)~~ (7) the person has not had a previous dismissal under this section.

(b) Notwithstanding IC 35-38-1-1(a), the court, without entering a judgment of conviction, may defer further criminal or juvenile proceedings and place the a person in a drug court subject to conditions established by the drug court.

(c) The drug court, the prosecuting attorney, and the participant must all agree upon the duration of the conditions established under subsection (b).

(d) If the drug court determines, after a hearing, that:

(1) the person violated a condition established under subsection (b); or

(2) the period of time that the conditions established under subsection (b) were in effect expired before the person successfully completed each condition established by the drug court;

the drug court may terminate the person's participation in the drug court.

(e) When a person's participation in a drug court has been terminated by the drug court under subsection (d), the drug court shall:

(1) if the person is referred to the drug court for committing an offense:

(A) enter a judgment of conviction against the person; or ~~(2)~~

(B) refer the case back to the court that referred the case to the

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drug court to allow the referring court to enter a judgment of conviction against the person; **or**

(2) if the person is a parent, guardian, or custodian of a child who has been adjudicated a child in need of services due at least in part to the substance abuse of the parent, guardian, or custodian:

(A) modify a dispositional decree entered by the drug court concerning the child in need of services; or

(B) refer the case back to the court that referred the case to the drug court to allow the referring court to modify a dispositional decree entered by the court concerning the child in need of services;

taking into consideration the termination of the person's participation in the drug court.

(f) When a person fulfills the conditions established by a drug court under subsection (b), the drug court shall:

(1) if the person is referred to the drug court for committing an offense:

(A) dismiss the charges against the person; or ~~(2)~~

(B) refer the case back to the court that referred the case to the drug court to allow the referring court to dismiss the charges against the person; or

(2) if the person is a parent, guardian, or custodian of a child who has been adjudicated a child in need of services due at least in part to the substance abuse of the parent, guardian, or custodian:

(A) modify a dispositional decree entered by the drug court concerning the child in need of services; or

(B) refer the case back to the court that referred the case to the drug court to allow the referring court to modify a dispositional decree entered by the court concerning the child in need of services;

taking into consideration the person's fulfillment of conditions established by the drug court.

SECTION 5. IC 31-34-20-1, AS AMENDED BY P.L.146-2008, SECTION 602, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Subject to this section and section 1.5 of this chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

(1) Order supervision of the child by the department.

(2) Order the child to receive outpatient treatment:

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- 1 (A) at a social service agency or a psychological, a psychiatric,
 2 a medical, or an educational facility; or
 3 (B) from an individual practitioner.
- 4 (3) Remove the child from the child's home and authorize the
 5 department to place the child in another home or shelter care
 6 facility. Placement under this subdivision includes authorization
 7 to control and discipline the child.
- 8 (4) Award wardship of the child to the department for
 9 supervision, care, and placement.
- 10 (5) Partially or completely emancipate the child under section 6
 11 of this chapter.
- 12 (6) Order the child's parent, guardian, or custodian to complete
 13 services recommended by the department and approved by the
 14 court under IC 31-34-16, IC 31-34-18, and IC 31-34-19.
- 15 (7) Order a person who is a party to refrain from direct or indirect
 16 contact with the child.
- 17 (8) Order a perpetrator of child abuse or neglect to refrain from
 18 returning to the child's residence.
- 19 **(9) Refer the child's parent, guardian, or custodian to a drug**
 20 **court under IC 12-23-14.5 if the child has been adjudicated a**
 21 **child in need of services due at least in part to the substance**
 22 **abuse of the parent, guardian, or custodian.**
- 23 (b) A juvenile court may not place a child in a home or facility that
 24 is located outside Indiana unless:
- 25 (1) the placement is recommended or approved by the director of
 26 the department or the director's designee; or
 27 (2) the juvenile court makes written findings based on clear and
 28 convincing evidence that:
- 29 (A) the out-of-state placement is appropriate because there is
 30 not a comparable facility with adequate services located in
 31 Indiana; or
 32 (B) the location of the home or facility is within a distance not
 33 greater than fifty (50) miles from the county of residence of
 34 the child.
- 35 (c) If a dispositional decree under this section:
- 36 (1) orders or approves removal of a child from the child's home or
 37 awards wardship of the child to the department; and
 38 (2) is the first juvenile court order in the child in need of services
 39 proceeding that authorizes or approves removal of the child from
 40 the child's parent, guardian, or custodian;
 41 the juvenile court shall include in the decree the appropriate findings
 42 and conclusions described in IC 31-34-5-3(b) and IC 31-34-5-3(c).

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